IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 18810 of 2003

Between:

G.Chandraiah, S/o.Rosaiah, AP Housing Board, R/o.Hyderabad

..... PETITIONER

AND

1. The Government of Andhra Pradesh, rep.by its Principal Secretary, Housing Department, Secretariat Buildings, Saifabad, Hyderabad.

2. A.P.Housing Board, rep.by its Vice Chairman & Housing Commissioner, 'Gruhakalpa' M.J.Road, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of "Writ of Mandamus" declaring the action of the Respondents in continuing the petitioner under suspension dated 23/4/2001 as arbitrary, illegal, unjust, contrary to law, in violation of the fundamental rights guaranteed under Articles 14,16 and 21 of the Constitution of India and also in violation of Article 311 of the Constitution of India, apart from being violative of the principles of natural justice and also in the teeth of G.O.Ms.No.86 (Gen.Administration, (Services-C) Department, dated 8/3/1994 and for a consequential direction to the 1st respondent to reinstate the petitioner into service without reference to G.O.Rt.No.96, dated 23/4/2001 and for consequential reliefs.

Counsel for the Petitioner:MR.K.R.PRABHAKAR

Counsel for the Respondent No.1: MR.A.K.JAYAPRAKASH RAO, G.P.for Housing

Counsel for respondent No.2: Sri J.Prabhakar.

The Court made the following :

O R D E R:

The facts of the case in brief are that in the year 1974 the petitioner herein joined in the 2nd respondent-A.P.Housing Board, Hyderabad, as Junior Housing Engineer, which was re-designated as Deputy Executive Engineer. On 16.10.1996, he was promoted as Executive Engineer and worked without any remark whatsoever. While so, on 25.09.1998 a report was published in 'Eenadu' Telugu daily making certain false allegations about the functionaries of the Board stating that the petitioner and others are responsible for ordering supply of wood material required for doors, window frames and shutters, etc., with private firms, contrary to the procedure prescribed. Basing on the said news item, Lokayuktha called for an explanation from the 2nd respondent and by order, dated 06.11.2000, he requested the Government to initiate necessary civil and criminal action against the four officials including the petitioner. It is also the case of the petitioner that the petitioner became the Executive Engineer only in the year 1996, but the respondent officials made him responsible for the produce of material for the relevant period from 1992-1999 and no action was taken against the other persons who are working in the said category from 1992-1999. On the matters of procurement, Superintending Engineers can only take a decision. Basing on the proceedings of Lokayuktha, a show cause notice bearing No.12489/B7/2000, dated 19.03.2001 was issued to the petitioner by the 2nd respondent. Immediately after the receipt of the said show cause notice, the petitioner submitted his explanation on 30.03.2001. On the date of issuance of show cause notice on the petitioner, F.I.R. was also given against the petitioner in furtherance of the directions issued by the Lokayuktha. After lodging of F.I.R., the

petitioner moved the VI Additional Metropolitan Magistrate, Nampally, Hyderabad, seeking anticipatory bail, but the same was rejected. There after, the petitioner approached this Court by filing Crl.P.Nos.1372 & 1444 of 2001 and this Court by order, dated 25.04.2001 granted conditional anticipatory bail to the petitioner. The petitioner was placed under suspension pending disciplinary proceedings are pending. The action of the authorities in placing the petitioner under suspension beyond the period of two years is contrary to G.O.Ms.No.86, dated 08.03.1994, which provided that the period of suspension shall not be for more than two years, unless there is a deliberate delay caused due to the non-cooperation of the employee concerned.

The 2nd respondent filed counter stating that questioning the suspension order, dated 23.04.2001, the writ petitioner filed another writ petition in W.P.No.9266 of 2001. Therefore, the present writ petition is not maintainable. The first respondent placed the petitioner under suspension by exercising powers as conferred under Sub-Rule (1) of Rule 8 of APCS (CC&A) Rules, 1991. As the petitioner and others committed gross mischief, abused the powers and chosen to place orders on private firms for supply of wood material required for doors and windows, frames and shutters etc., for the houses constructed by the Housing Board during the period from 1995 to 1999 and deliberately split the estimated value of supply order amounting to Rs. 5,00,000/- on private firms of their choice and failed to call for open tenders. The 1st respondent reviewed the suspension order and found that the petitioner should be kept under suspension until the conclusion of the disciplinary proceedings in the interest of public.

On the other hand, the learned counsel appearing for the petitioner submits that he has withdrawn W.P.No.9266 of 2001 with a liberty to prosecute the present writ petition and this Court has allowed the petitioner to withdraw the writ petition by giving liberty to the petitioner to prosecute this writ petition.

By order, dated 23.04.2001 of the 1st respondent, the petitioner was placed under suspension. There after, the Government issued G.O.Rt.No.25, Housing (Vig.Cell) Department, dated 01.02.2002 stating that after careful examination of the case, it reviewed the suspension order and in terms of G.O.Ms.No.578, Gen.Admn. (Ser.C) Department, dated 31.12.1999 read with G.O.Ms.No.86, General Admn.(Ser.C) Department, dated 08.03.1994 ordered that in the interest of public, Sri K.Jagan Mohan Reddy, Superintending Engineer and G.Chandraiah, Executive Engineer, Housing Board shall be continued under suspension until further orders and thereby directed the 2nd respondent to take necessary further action in the matter. Against the said order of the Government, the petitioner preferred W.P.No.9266 of 2001. This Court by order dated 31.12.2001 in W.P.M.P.No.11771 of 2001 in W.P.No.9266 of 2001 directed the respondents to review the order of suspension passed against the petitioner in the light of G.O.Ms.No.86, dated 08.03.1994 within a period of three weeks from the date of receipt of a copy of that order. Pursuant to the interim orders of this Court, the Government vide G.O.Rt.No.155, dated 22.06.2002 passed orders to the effect that the petitioner shall be continued under suspension until further orders. The last order that was passed by the Government is G.O.Rt.No.155, dated 22.6.2002.

With regard to the review of suspension order against the Government servants, the Government to take a policy decision constituted a Standing Sub-Committee of the Secretaries to Government to examine the issue of “Suspension of Public Servant” and to submit proposals for review of the existing instructions. The said Committee as constituted in its meeting held on 06.12.1993 made certain recommendations and one of the said recommendations reads as follows:

> “ An outer limit be provided as two years from the date of suspension, failing which the public servant may have to be reinstated without prejudice to the proceedings being pursued. However, in exceptional cases, considering the gravity of the charges, one could be continued under suspension even

beyond a period of two years, especially in cases where there is deliberate delay caused due to non-cooperation of the employee concerned."

For the last two years, no action was taken by the respondents to review the suspension order. As per Clause-3 of the recommendations of the Sub-Committee, an outer limit provided for the Government servants is only two years from the date of suspension and in exceptional cases, considering the gravity of the charges, one could be continued under suspension even beyond a period of two years, especially in cases where there is a deliberate delay caused due to the non-cooperation of the employee concerned. In the instant case there are no such allegations against the petitioner that he is not cooperating with the respondent officials in completing the enquiry, which is pending against him. Even in exceptional cases, the outer limit for the suspension period against the employees of Government servants is only two years. In the instant case, the respondent officials suspended the petitioner on 23.04.2001 and even after the expiry of outer limit of suspension period of two years, no steps were taken by the respondents to reinstate the petitioner into service.

The learned counsel for the petitioner further submits that the action of the respondents in keeping the petitioner under suspension continuously for a period of more than 3 ½ years is illegal and arbitrary and amounts to punishment. It is also submitted that though the petitioner is co-operating with the respondent officials to complete the enquiry, they are neither conducting any enquiry nor reviewing the suspension order. In those circumstances, the petitioner filed repeated representations to revoke the suspension order against him, after conducting an enquiry into the matter as per the convenience of the respondents and to reinstate him into service, but the respondents did not respond to the representations.

In view of the above facts and circumstances of the case, I am of the opinion that keeping the petitioner under indefinite suspension is illegal and contrary to the

orders issued in G.O.Ms.No.86, General Administration, Services (C) Department, dated 08.03.1994.

For the aforesaid reasons, the respondents are hereby directed to review the case of the petitioner keeping in view the guidelines stipulated in G.O.Ms.No.86, General Administration, Services(C) the order, dated 08.03.1994 and pass appropriate orders in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order for the reinstatement of the petitioner into service.

The writ petition is accordingly allowed. No costs.

27.10.2004

tjs

The Rule Nisi has been made absolute as above.

Witness the Honourable Sri Devinder Gupta, the

Chief Justice on Wednesday, the 27th day

of October, two thousand and four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Principal Secretary, Government of Andhra Pradesh, Housing Department, Secretariat Buildings, Saifabad, Hyderabad.
2. The Vice Chairman & Housing Commissioner, A.P.Housing Board, Gruhakalpa, M.J.Road, Hyderabad.

3. 2 CCs to the G.P. for Housing Board, High Court of A.P., Hyderabad (OUT)

4. 2CD copies